CF0000057580

(2)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

MISC. CRIMINAL CASE NO. 3209 OF 1988
CRIMINAL APPEAL NO. ~~OF 1988.~~ Cr A 1122/88

APPELLANT: State of Madhya Pradesh,
through Excise Inspector, Bilaspur,
Tahsil & District, Bilaspur M.P.

Vs.

ACCUSED RESPONDENTS (1) Mahendra Pratap Singh, s/o Jag Mohan Singh, aged about 26 years, By Caste, Thakur, R/O Gaurella, Tahsil Pendra, District Bilaspur. M.P.

12.8.88
Filed by
Sri O.P. Namdeo
Govt Advocate
on 12.8.88
at 4.40 pm

(2) Nandlal S/O Ram Kishan aged about 24 years, by caste Jaiswal, R/O Bhaipur, District, Mirjapur (U.P.)

(3) Vijay Singh S/O Shri Hari Naraian Singh, aged about 34 years, r/o Kapasia District Banaras (U.P.)

Applied 12.8.88

(4) Panju Ram S/O Banshi aged about 30 years, by caste Yadav, r/o Ratanpur, Tahsil and District, Bilaspur M.P.

(5) Mohammad Hamid S/O Yar Mohammad aged 16 years, r/o Pendra Road, Tahsil Pendra Road, Distt. Bilaspur M.P.

(6) Tulsi, s/o Nandlal Jaiswal, aged about 25 years, r/o Belgahnana, Police Station, Kota, Tahsil Kota, District Bilaspur M.P.

(7) Shiv Murat S/O Banarasi Prasad Jaiswal Liquor Contractor, Kota Tahsil Kota, District, Bilaspur M.P.

(1)

APPLICATION FOR GRANT OF LEAVE TO FILE AN APPEAL UNDER SECTION 378(1) AND CRIMINAL APPEAL U/S.378(III) CR.P.C AGAINST ACQUITTAL.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

Cr. A. No. 1122/1988

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

05-09-2006

Shri Arun Sao, Govt. Advocate/ Additional Public Prosecutor for the appellant/State.

Shri Ashish Shrivastava, counsel for the respondents.

Arguments heard.

Judgment dictated as follows.

ORAL JUDGMENT

This appeal has been filed by the State being aggrieved with the judgment of acquittal dated 6th May, 1988 passed by the Chief Judicial Magistrate, Bilaspur, in criminal case No.2384/83.

(2) The brief facts are that on 17-3-1985, PW-3, Excise Inspector namely G.K. Sharma, went near the liquor shop of village Ratanpur and found that a truck bearing registration No.CPL-6038 was standing there. On investigation he found that illicit liquor contained in 800 bottles was kept in the truck. The driver of the truck was Mahendra Pratap Singh and the conductor was Mohammad Hameed. The allegations are that this liquor was being unloaded in the liquor shop by Panchuram and Vijay Singh. The investigating Officer (PW-3), prepared a seizure memo of the aforesaid articles vide Ex.P/1 and after further enquiry,

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

presented the charge sheet under Section 34-A of the Excise Act, 1915 (for short 'the Act').

(3) Charges were also framed under the aforementioned Section of the said Act and the accused persons were put to trial.

(4) During the course of trial, prosecution examined six witnesses. PW-1 namely Samaru, who was a Rikshaw Puller, stated that he was called by the persons of the Excise Department at a particular place, where some wet article was kept in some pot and after preparation of some documents his thumb impression was obtained by the said Officers. PW-2 namely Ganesh is also the witness of seizure memo (Ex.P/1), but he only says that the persons of the Excise Department had came to the liquor *bhatti*, where he was called and he saw that some rubber bladder and pots were kept there and his signature was also taken on Ex.P/1. Other witnesses namely Babu Lal (PW-4), Suryanarayana (PW-5) and Anuj Ram (PW-6) were also examined, but they deposed nothing against the accused persons showing their innocence regarding any knowledge in connection with the said crime.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(5) The Investigating Officer namely G.K. Sharma was examined as PW-3. It comes in his statement that on 17-8-1983, he had gone to the liquor shop of village Ratanpur and he had seized 800 bottles of liquor loaded on a truck. He says that a seizure memo vide Ex.P/1 was prepared and the sample of the article was also examined. He further says that during the course of investigation, he had seized the register of Achanak Marg Forest Barrier vide Ex.P/2 and the same was given on *supardnama* to the Barrier Guard vide Ex.P/3, however, it has not been stated as to what was contained in the register and what he wanted to establish from the contents of the register.

(6) Learned counsel appearing for the appellant/State argues that though the witnesses of seizure and other witnesses have turned hostile, but the evidence of PW-3, Investigating Officer, is intact and the conviction can be based on the sole testimony of this Officer.

(7) On the other hand, learned counsel appearing for the respondents/ accused persons submits that since both the witnesses of seizure have turned hostile and the version of the PW-3, Investigating Officer, is not supported by the other witnesses, therefore, the Court below has rightly

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acquitted the accused persons and the judgment of acquittal cannot be interfered with. He refers to the decision rendered in the matter of **Nandu @ Nandkishore vs. State of Madhya Pradesh (2002) (2) C.Cr.J. 712 (M.P).**

(8) I have heard learned counsel for the parties at length and have also perused the record of the Court below.

(9) So far as legal preposition is concerned, there is no doubt about it that if the evidence of the Investigating Officer is found to be trustworthy and dependable and nothing material has been brought to discredit his evidence in the cross-examination or his evidence is otherwise not unreliable, the criminal Court would be justified in convicting the accused on the sole testimony of the Investigating Officer. I am fortified in my views by a decision of the Supreme Court rendered in the matter of **Lopchand Naruji Jat and another vs. State of Gujarat (2004) 7 SCC 566.** Normally in cases where the evidence led by the prosecution as to a fact depends solely on the police witnesses, the courts seek corroboration as a matter of caution and not as a matter of rule. Thus, it is only a rule of prudence, which makes the court to seek corroboration from an

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independent source, in such cases while assessing the evidence of the police. But in cases where the court is satisfied that the evidence of the police can be independently relied upon then in such cases, there is no prohibition in law that the same cannot be accepted without an independent corroboration. (**Please see : Praveen Kumar vs. State of Karnataka (2003) 12 SCC 199**).

(10) In the present case, if we examine the testimony of PW-3 Mr. G.K. Sharma, Excise Inspector, it would appear that on the basis of his own statement, the case comes that 800 bottles of illicit liquor were found loaded on a truck. In the said situation, at the most, he should have taken cognizance against the driver and cleaner of the truck, if any, but the said Officer has taken cognizance in the matter against as many as seven persons including the licensee of the liquor shop and also against the employees of the liquor shop when except the seizure of the liquor from the truck, there was no positive evidence in this case. On this count, the testimony of the Investigating Officer, who intended to implicate more and more persons even without proper evidence against them, is not reliable and is not solely dependable so as to warrant conviction of the accused persons on the basis of his sole testimony.

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	(11) In the facts and circumstances of this case, when the sole testimony of the Investigating Officer is not found to be trustworthy for awarding conviction to the accused persons, in the opinion of this Court, the trial Court has rightly acquitted the accused persons of the charges framed under Section 34-A of the Act. (12) In the result, the appeal filed by the State against the judgment of acquittal passed by the trial Court has no merits. The same fails and is dismissed. The accused persons are on bail; their bail bonds are cancelled and the sureties are discharged. Sd/- SUNIL KUMAR SINHA Judge	

Gowri

(पीछे देखिये)

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